IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4270 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHAUDHARI MRUNALINI LAXMAN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4270 of 2004

MR KB PUJARA for Petitioner No. 1

MR DIPEN DESAI, LD.AGP for Respondent No. 1-2,4-5

..... for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE K.M.MEHTA

Date of decision: 16/04/2004

ORAL JUDGEMENT

1. Rule. Mr.Dipen Desai, learned AGP waives service of rule on behalf of State.

2. Chaudhari Mrunalini Laxman, petitioner has filed this petition with a prayer that this Court may quash and set aside the order dated 6th March, 2004, passed by the Director of Primary Education, Gujarat State - respondent No.2 herein which has been produced at Annexure "D" to the petition.

3. It may be noted that this Court issued notice on 6th April, 2004, and pursuant to that notice, the respondent No.4 Deputy Director of Developing Castes Welfare Department, Gujarat State has filed affidavit on 13th February, 2004. Alongwith the said affidavit, the authority has also produced the order dated 3rd April, 2004, and other documents in this behalf.

4. When the matter was placed for hearing before this Court, Mr.K.B.Pujara, learned advocate for the petitioner states that the order dated 6th March, 2004, passed by the respondent No.2 he has relied upon the communication from respondent No.4 dated 28th January, 2004. Solely relying upon the said order, the respondent No.2 has passed this order. He has submitted that it is an admitted fact that the order dated 28th January, 2004, was not supplied to him earlier, the same has been produced only in the affidavit filed by respondent No.4 in this behalf.

5. Learned advocate for the petitioner states that this order is therefore passed violating rule of natural justice as the material which has been relied upon by respondent No.2 dated 28th January, 2004, passed by respondent No.4 has not been given to the petitioner. Mr.Dipen Desai, learned AGP is not able to controvert this fact at this stage.

6. I have considered the facts and circumstances of the case. The natural justice is an important concept in administrative law. It is true that generally no provision is found in any statute for the observance of the principles of natural justice by the adjudicating authorities. However, broadly the principle of natural justice provides that (i) No man shall be a judge in his own cause, or the deciding authority must be impartial and without bias; and (ii) Hear the other side, or both the sides must be heard, or no man should be condemned unheard, or that there must be fairness on the part of the deciding authority.

7. As regards second principle is concerned, one of the concept of natural justice is a notice which means that before any action is taken the affected party must be given a notice to show cause against the proposed action and seek his explanation. It is a sine quo non of the right of fair hearing. Any order passed without giving notice is against the principles of natural justice and is void ab initio. That principle also includes that no evidence shall be taken at the back of other party.

8. In support of aforesaid principle there is a judgment of Hon'ble Supreme Court in the case of Union of India Vs. V.T.R. Varma reported in AIR 1957 SC 88 relevant page 885.

"Stating it broadly and without intending it to be exhaustive, it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them."

9. There is also a judgment of the Constitution Bench judgment of the Hon'ble Apex Court in the case of Managing Director ECIL vs. B. Karunakar reported in AIR 1994 SC 1074 particularly para 7 on page 1091 the Constitution Bench has held as under"

".... Hence it has to be held that when the Inquiry Officer is not the disciplinary authority, the delinquent employee has right to receive a copy of the Inquiry Officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the Inquiry Officer's report before the disciplinary authority takes its decision on the charges is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice."

10. Disclosure of Documents Ancillary to the Right to

Information. Access to documents or information is an essential requisite of an open society. This also means the right to information, which is implicit in the right to a fair hearing.

{Re: Administrative Law, Sixth Edition by Dr.S.P.Sathe page 196 }

11. A democratic government must be transparent. People must know how decisions are taken and who takes them. The principles of natural justice require that a person against whom an action is to be taken, depriving him of a right or causing some detriment, must be told why the action is proposed to be taken and he must be given an opportunity to say why it should not be taken."

{Re: Administrative Law, Sixth Edition by Dr.S.P.Sathe page 502}

12. In view of these decisions, evenif the administrative authority i.e. respondent No.2 when it passed the order of cancelling the certificate particularly relying upon the communication dated 28th January, 2004, which was not supplied to the petitioner, there is a violation of rules of natural justice and, therefore, in view of the same the order dated 6th March, 2004, is quashed and set aside. This petition is allowed to that extent. Rule made absolute with no order as to costs. D.S. is permitted.

(K.M. Mehta, J.)

syed/